

REMARKS

The present Amendment is submitted in response to the non-final Office Action that issued March 18, 2009. The non-final Office Action reopened prosecution, setting forth a new ground of rejection.

That is, claims 1, 2, 5, 6, 8-14 and 18-23 are rejected under 35 USC §103(a) as unpatentable over US Patent Application No. 5,712,782 to Weigelt, et al. (Weigelt) in view of US Patent No. 6,553,300 to Ma, et al. (Ma).

To support the rejection the Examiner asserts that it would have been obvious to the skilled artisan at the time of invention to have combined Weigelt's method for adjusting parameters of at least one machine with Ma's teaching of selecting process algorithm method steps.

The Examiner further asserts that the reason the skilled artisan would think to combine Ma with Weigelt is that Ma's selecting process algorithm method steps eliminates the need for constant operator monitoring and regular adjustment and reduces operator fatigue (Ma at col. 2, lines 49-53).

Applicants respectfully assert while they agree that Weigelt teaches a method optimization of adjustable parameters, and Ma teaches a controller to monitor the quality of the harvesting process such as grain loss, dockage, grain damage, etc., they do not agree that the combination of Ma with Weigelt realizes applicants' method as claimed, or that it would have been obvious for the skilled artisan to have made such a combination.

Applicants' inventive method recognizes situation patterns of agricultural machines, i.e., operating conditions, and compares recognized situation patterns with already stored situation patterns utilizing the data processing system. That is, the method chooses machine parameters or maintenance steps that are linked to the stored situation patterns for adjusting machine parameters of for carrying out certain maintenance/service/repair.

The method and the data processing system that implements the method recognize, based on several machine-internal and machine external parameters, under which conditions (critical situations) the machine operates currently, and based thereon suggests basic steps for overcoming the critical situation. The method has the effect that a maintenance/repair procedure or parameter adjustment procedure starts with pre-optimized parameters/steps so that time consumption for reaching the result, i.e., end of maintenance/repair; optimized operation parameters) is significantly reduced.

Such operation is found neither in Weigelt or Ma, nor in their proposed combination.

In more detail, applicants disagree that Ma teaches "selecting" a process algorithm at col. 5, lines 1-9 and col. 6, lines 4-12 (emphasis added). Applicants do not find that there is a selection taught or suggested by the cited Ma text. More accurately, with all due respect, the cited Ma text indicates that every one of the fuzzy controllers 244a-244f provide adjustment information for rotor speed, concave clearance, fan speed, chafer opening, sieve opening and vehicle speed,

respectively. Reference to the set of fuzzy controllers is not equivalent to selection of a process algorithm. Even assuming that each fuzzy controller merely implements an algorithm, reference to a set of algorithms is not equivalent to selection of a process algorithm.

Ma's subject matter and the claimed subject matter are different, i.e., patentably distinct. That is, Ma operates with a different set of operating principles, rules comprising fuzzy logic. Ma is not concerned with choosing algorithms that closely follow the machine internal data, machine external data, target data, and a combination thereof, in order to quickly optimize using an algorithm constructed to be responsive to the exact pattern comprising said data combination.

Furthermore with respect to the claimed selecting, applicants further disagree that Ma at col. 5, lines 29-58 and col. 6, lines 4-9, teaches automatically selecting a process algorithm depending on data consisting of machine-internal data, machine-external data, and target data. Ma at col. 5, lines 44-47, states that inputs to the system 270 include harvesting conditions, crop type, location, grain yield from the operator interface, and information from on-board sensors and microcomputers. All of this information but for information from microcomputers is machine-external data. Ma does not disclose the use of target data, or some combination of target data with machine-internal data and machine-external data, as claimed, or automatically selects one algorithm based on the complete limitation.

Applicants do not find that Ma teaches or suggests defining situation patterns for the process algorithms by at least a part of data selected from the group consisting of machine-internal data, machine-external data, target data and combinations thereof. This important claimed feature is just not found in Ma at col. 5, lines 29-58. While rules are used to process one and two inputs (Fig. 5B), no definition of situation patterns for process algorithms is either taught or suggested by Ma.

Nor is Ma found to teach or suggest the step of selecting a situation pattern that comes at least close to an instantaneous situation pattern and a process algorithm linked to the situation pattern, depending on the at least one part of the machine-interior data and machine-exterior data with consideration of the target data which defines at least a part of an instantaneous situation pattern.

The inputs to the fuzzy controllers are provided by selector 240. As shown in Figs. 5A and 5B, these inputs are any of low, medium or high, with the corresponding outputs based on the nine rules. All the rules are used.

No selection of a situation pattern that comes at least close to an instantaneous situation pattern and a process algorithm linked to the situation pattern is found, nor the further limitation that depending on the at least one part of the machine-interior data and machine-exterior data with consideration of the target data which defines at least a part of an instantaneous situation pattern.

In view of the differences between Ma and applicant's invention as claimed, the skilled artisan would not have looked to Ma to overcome the

shortcomings of Weigelt. That is, the present invention can not be derived from the combination of the references, since any combination would not lead to the invention as claimed. Instead, Ma would have to be modified, and Weigelt would have to be modified to incorporate the modified operation of Ma.

It is known that in order to arrive at a claimed invention by modifying the references cited art must itself contain a suggestion for such a modification. This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision In re Randol and Redford, 165 USPQ 586, that prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

For that matter, even if the Weigelt and/or Ma could be modified and combined, it is respectfully submitted that neither disclose any hint or suggestion for their combination, and thus it would not have been obvious for one skilled in the art to combine them. This principle is affirmed by the CAFC in In re Fritch, 23 USPQ 2d, 1780, 1784 (Fed. Cir. 1992), which stated that

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious ... "one can not use inside reconstruction to pick and choice among isolated disclosures in the prior art to depreciate the claimed invention"

In view of the above presented remarks and amendments it is believed to be clear that claim 1 is patentably distinguished over the art and should be allowed. As for dependent claims 2, 5, 6, 8-14 and 18-23, these claims depend

from claim 1 and share the allowable features. Hence, applicant respectfully requests withdrawal of the rejection of claims 1, 2, 5, 6, 8-14 and 18-23 (the pending claims) under 35 USC §103(a) over Weigelt in view of Ma, and allowance of the present application.

Accordingly, the application is believed to be in condition for allowance. Action to this end is courteously solicited. However, should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'MJS', written over a horizontal line.

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